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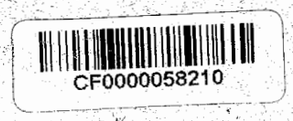

(2)

BEFORE THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL NO. 568 OF 1995.

APPELLANT :- Ramji son of Deemla Uraon, aged about 22 years, occupation- Agriculturist, resident of Jajga, Police station- Sitapar, District Sarguja.

Jail

Versus

RESPONDENT :- The State of Madhya Pradesh, through the Police station- Sitapar, District Sarjuja, M.P.

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE.

C842

Filed on 5/4/95
by Shri Sahkar Das Sarjan
Advocate

R. to D.R.
Dt. 5/9/95

(39)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 568 OF 1995

Ramji

Vs.

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
Judge
21-6-2006

Hon'ble Shri Justice V.K. Shrivastava

J. do-

Sd/-
V.K. Shrivatava
Judge

post for 21-6-2006

Sd/-
Fakhruddin
Judge

(40)

HIGH COURT OF CHHATTISGARH: BILASPUR

CORAM: Hon'ble Shri Fakhruddin, J &
Hon'ble Shri Vijay Kumar Shrivastava, J.

CRIMINAL APPEAL No.568/1995

Ramji

Vs

State of Chhattisgarh

PRESENT;

Smt. Kiran Jain, Counsel for the appellant.
Shri C.R. Sahu, Panel Lawyer for the respondent/State.

JUDGMENT

Per Hon'ble Fakhruddin, J.

The appellant has preferred this appeal against the judgment and findings dated 30/1/1995 passed by the Sessions Judge, Sarguja, in Sessions Trial No.348/93 whereby he has been convicted for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life.

2) Briefly stated the facts are that the fields of deceased Harihar and those of accused Ramji are adjacent to each other and some dispute was going on between them about the fields, for which a Panchayat was convened and the accused was asked not to initiate quarrel on that count and if he has any grievance he was advised to make suitable application before the Tehsildar for appropriate proceedings. It is alleged that on 03/08/1993 in the evening at 4.30, Harihar went to his agricultural fields; he found that accused was present there and was interrupting the flow of water which was going to the fields of deceased Harihar. He stopped the complete flow of water towards that side. Harihar

protested and asked the accused to allow him to take the water but the accused did not agree. Deceased Harihar tried to make the flow of water towards his fields but accused filthily abused him and gave spade blows several times, as a result of which Harihar received the injuries on the head and other parts of the body. Harihar fell down there itself. Having seen this incident, it is stated that his brother Jagmohan (PW/4), who was grazing the cattle at some distance, got scared and ran away from the scene of occurrence and went to his house and told to his father Shani about the incident. Jagmohan and Shani both came to the spot and saw the injuries on the person of the deceased Harihar. PW/4-Jagmohan went to the police station, Sitapur and lodged the first information report (Ex.P/8). The merg (Ex.P/9) was recorded. The Panchnama (Ex.P/1) of the dead body of the deceased was prepared by the Investigating Officer. A requisition (Ex.P/7) was sent to the Primary Health Centre, Sitapur for postmortem of the dead body of the deceased. Doctor C.R. Agrawal (PW/2) conducted the post mortem on the dead body of the deceased and prepared the post mortem report (Ex.P/8). He found as many as six injuries on the dead body of the deceased which are as follows:

1. Incised wound on the forehead in the size of ½" x ½" x ½"
2. Incised wound over the scalp and temporal region in the size of 2" x 1" x 1".
3. Incised wound over left parietal region in the size of 2" x 1" x ¾"
4. Incised wound over the scalp in the size of 2" x ½" x 1".
5. Incised wound over the scalp in occipital region in the size of 3" x 1" x 1".
6. Contusion over the scalp and occipital region in the size of 1" x ¾".

In the opinion of Doctor, the cause of death was shock and excessive haemorrhage and death was homicidal in nature.

3) The accused was arrested on 5/8/93. During the course of the investigation under the Police custody, accused/appellant gave memorandum (Ex.P/4) regarding the place where he kept the Spade, the weapon of the offence, and in pursuance of the same, SHO recovered the same vide Ex.P/5. The spot map was prepared and the challan was filed. On the charge being framed, the accused appellant abjured the guilt and contended that he has been falsely implicated.

4) In order to prove the offence against the accused/appellant, prosecution examined ten witnesses, namely, Sitaram (P.W.1), Dr. C.R. Agrawal (P.W.2), Rambachan (P.W.3), P.W. 4 Jagmohan, P.W.5 Sughan, P.W.6 Kenda, P.W.7 Shani, P.W.8 Ramesh, P.W.9 Gond Sai and P.W.10 Tusu. The accused did not lead any evidence.

5) The learned trial Judge on the basis of material adduced found the accused guilty and convicted and sentenced him as stated above.

6) Learned counsel for the appellant contended that the evidence of P.W.4 Jagmohan is not trust worthy. It is further contended that he is an interested witness. On the other hand, learned counsel for the State supported the judgment of the trial Court and contended that the appeal has no substance.

7) Perused the record. The matter rests on the eye witness account of P.W. 4 Jagmohan, who in his statement has stated that he was grazing buffalos, Ramji was there in his field and at that time deceased Harihar came there and asked the accused Ramji why he has restrained the flow of water. Accused Ramji stated that he would restrain. P.W.4 further stated that Harihar started opening the water so that the water may flow towards his field. Ramji gave a blow to Harihar on his head by spade and Harihar fell down on the earth. He had seen this from 60-70 feet. Ramji gave four-five spade blows. P.W.4 also stated that because of fear he could not go on the exact place as the accused would beat him. He went to the house and told to his father that Ramji has done to death to Harihar. He came back alongwith his father to the place of occurrence and saw that the blood was oozing out from the head of Harihar. In para-3 of his statement he stated that after seeing the dead body of Harihar on the spot, they started crying and shouting, on this village person Jagra and other persons came on the spot and he told them that Ramji had beaten Harihar by spade. Then he went to the police station and lodged the report. Merg intimation (Ex.P/9) was recorded and he put his thumb impression on that. The police had come to the village, prepared the panchnama and the post-mortem was conducted. PW-4 in his cross-examination has stated that Harihar was his real brother. He further stated that Ramji was not allowing the water and as such Harihar had opened the water. He denied that he has not seen the incident. He further denied that as Harihar is his brother, therefore, he is telling lie. He also denied

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the suggestion that since the water was stopped, therefore, they were falsely implicating the accused.

8) We have gone through the evidence and especially the cross-examination of PW-4. There is nothing brought on record to discredit his version. PW-5 Sugan is another witness, who has stated that he knew deceased Harihar and also accused Ramji. He further stated that last year on the day of Rakshabandhan, Harihar was murdered. He also stated that one Tusu was sick and he had gone to see him to his house. He also stated that when he was in the house of Tusu, accused Ramji came and demanded cycle from Tusu. He asked Ramji where he is going, upon this question the accused replied that some quarrel has taken place with Harihar and he is going to take medicine and on his own he took away the cycle and ran away. Though this witness has been turned hostile, but he has stated that accused had stated that some quarrel had taken place with Harihar. The evidence of PW-4 Jagmohan is also corroborated by his father PW-7 Shani who in his statement had stated that Harihar was his son, Jagmohan told him that accused Ramji had beaten Harihar by spade and hearing this he alongwith Jagmohan went to the spot and found that his son Harihar is lying dead. He further stated that there was injury on the head of Harihar and the blood was oozing out. The evidence of Jagmohan is further corroborated by the medical evidence and First Information Report lodged immediately. The post-mortem report shows that the deceased had suffered as many as six injuries and they are on vital parts of the body, which go to show that the intention and the knowledge was apparent.

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9) So far as evidence of interested witness is concerned, Hon. Apex Court in the case of ***Harbans Kaur and ano. vs. State of Haryana*** reported in ***2005 AIR SCW 2074*** held as under:

> "There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused. No evidence has been led in this regard."

In the instant case, we found that the evidence of P.W.4 Jagmohan is such on which the implicit reliance can be placed. He is the natural witness and witnessed the incident. He is not the tutored witness. There is no infirmity in his evidence.

10) Lastly, learned counsel for the appellant submits that the offence would not fall under Section 302 of the IPC as the incident happened in a heat of passion and in a spur of moment and there was no intention to kill the deceased. Reliance has been placed by learned counsel for the appellant in the matter of ***Tarachand and others Vs. The State of Maharashtra***, reported in ***2000 Cri. L.J. 2667***.

11) Learned State counsel opposed the contention of the learned counsel for the appellant and contended that it is a settled principle of law that number of injuries is irrelevant and it is not always the determining factor in ascertaining the intention. He placed reliance upon the decision in the case of ***State of Rajasthan Vs. Dhool Singh***, reported in ***AIR 2004 SC 1264*** wherein the Apex Court held as under:

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".....The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased with an intention of causing death or not. In the instant case it is true that the respondent had dealt one single blow with a sword which is a sharp-edged weapon measuring about 3 ft in length on a vital part of the body, namely, the neck. This act of the respondent though solitary in number had severed sternocleidal muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp-edged weapon would cause death. Such an injury not only exhibits the intention of the attacker in causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than causing the death of the victim....."

12) Having considered the facts and circumstances of the case and material on record and in view of the evidence on record, which has been relied upon by the trial Court and discussed hereinabove, we are of the considered opinion that the finding, conviction and sentence passed by the trial Court do not suffer from any infirmity, which may call for any interference by this Court in its appellate jurisdiction.

13) Accordingly, the appeal fails and is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
V.K. Shrivatava
Judge

R/H-